IN THE HIGH COURT OF DELHI

Bail Application No. 1742/2007

Anand Kumar Tripathi ..... Petitioner.
! through: Mr. Parmanand Pandy, Advocate.

VERSUS

$ State ..... Respondent
^ through: Mr. Anil Soni, Advocate.

% DATE OF DECISION: 20.08.2007

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: **PRADEEP NANDRAJOG, J.** (Oral)

FIR No.428/2007 dated 5.6.2007
U/S. 420 IPC
PS. Shakar Pur.

1. Petitioner seeks anticipatory bail in the above captioned FIR. S.I. Shams-ud-din the investigating officer is present in court with the record of investigation.

2. Before dealing with the matter in issue, I must record my displeasure at the way learned ASJ. has dealt with the application seeking anticipatory bail filed by the petitioner.

3. Needless to state, the warm and loving hands of a Judge are the only true guarantee of preserving the life and liberty of the citizens. When these hands turn cold, the first

casualty is Article 21 of the Constitution of India.

4. The FIR has been registered on being forwarded by the Union Minister of Water Resources. The complainant is one Ishrat Tasleem Shah.

5. In the complaint made to the Minister, complainant states that he is trading under the name Marvlex Trading Company and is based in Srinagar. He states that his company deposited Rs.5 lac with a company called Savera. He states that the company informed him that Rs.5 lacs would be returned but in installments. He states that some cheques which were issued towards return of Rs.5 lacs have bounced.

6. Petitioner who is the Administrative Officer of Savera sought anticipatory bail in the above captioned FIR before the learned ASJ. He brought to the notice of the learned Judge that on 26.4.2006 a memorandum of understanding was arrived at between his company i.e. Savera and the firm of the complainant. He stated that as per the MOU, the complainant was to deposit Rs.10 lacs with his company for dispatch of certain goods. He stated in his application that the complainant deposited only Rs.5 lacs. He stated that the MOU was breached by the complainant but his company agreed to return Rs.5 lacs. He stated in his application that Rs.1.3 lacs has been returned and that balance would be returned.

7. Qua himself, petitioner stated that being an employee of Savera he had no role to play in the transaction.

8. Surprisingly, in spite of the fact that whatever has been stated by the petitioner stands corroborated by the Investigation Officer, learned ASJ has rejected the application seeking anticipatory bail recording that in view of the nature of allegations, there is no ground for grant of anticipatory bail.

9. To say the least, the order passed by the learned ASJ reveals the utter dis-concern of the learned Judge to human rights.

10. What are the nature of allegations which have led the learned Judge to hold that no ground is made out for grant of anticipatory bail have unfortunately remained in the mind of the Judge. They do not find a reflection in the order dated 20.7.2007.

11. Far from there being no ground to grant anticipatory bail to the petitioner, each and every ground on which anticipatory bail can be granted is available.

12. Firstly, petitioner is an employee of the accused company. Secondly, petitioner had no role in the transaction between his employer and the complainant. Thirdly, employer of the petitioner admitted liability to pay back Rs.5 lacs to the complainant and in part satisfaction of said admission has paid Rs.1.3 lacs to the complainant. Lastly, it is the complainant who is in breach of a civil obligation. Notwithstanding that, the other contracting party agreed to restitute the benefit received under the civil transaction.

13. Petition accordingly stands disposed of directing that

petitioner would not be arrested in the above captioned FIR.

14. Copy of this order be transmitted to Sh. Mahavir Singhal, ASJ. A copy of this order would also be sent to the Registrar General of this court who would forward the same to the Inspecting Judge of Sh. Mahavir Singhal.

15. Dasti.

August 20, 2007 **PRADEEP NANDRAJOG, J.**
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